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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RODGER LEE SMITH, JR.,

Defendant and Appellant.

F071907

(Tuolumne Super. Ct. No. CRF31949)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Tuolumne County. James A. Boscoe, Judge.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Detjen, J., and Smith, J.

Appellant Rodger Lee Smith, Jr., filed a petition for resentencing pursuant to the provisions of Proposition 47. (Penal Code section 1170.18.)¹ The trial court denied the petition finding that appellant was ineligible under the terms of the statute. Appellate counsel filed a brief asserting she could not identify any arguable issues in the case. (*People v. Wende* (1979) 25 Cal.3d 436.) We agree and affirm the trial court's order.

On August 9, 2010, appellant entered a negotiated plea wherein he pled guilty to possession of marijuana in a jail facility, a violation of section 4573.6, and admitted having been convicted of a serious or violent felony within the meaning of section 667, subdivisions (b)-(i). In accordance with the plea agreement, the court sentenced appellant to four years in prison.

On April 10, 2015, appellant filed a petition for resentencing under section 1170.18. The district attorney filed a response stating the specified offense is not eligible for the requested relief pursuant to section 1170.18. On May 18, 2015, at a hearing unattended by appellant or the district attorney, the court denied the petition on the ground section 4573.6 is not a charge subject to resentencing or reduction under Proposition 47.

On June 4, 2015, appellant filed a notice of appeal. Appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436, raising no arguable issues and asking this court to independently review the record. By a letter dated January 25, 2016, we invited appellant to inform us of any issues he would like this court to address. Appellant did not respond.

Upon review of the record we agree appellant was ineligible for resentencing. Proposition 47 was enacted on November 4, 2014, and became effective the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 renders certain

¹ All statutory references are to the Penal Code.

drug- and theft-related offenses as misdemeanors. Proposition 47 also created a new statutory provision whereby a person who has completed serving a felony sentence for a reclassified offense can petition to have the offense designated a misdemeanor.

(§ 1170.18, subd. (f).) Section 1170.18, subdivision (a) lists those offenses which potentially are eligible for reclassification as a misdemeanor; section 4573.6 is not among them.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The order denying appellant's petition for resentencing pursuant to Proposition 47, is affirmed.